IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 319/05

Notes, Office Memoranda of
Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders.

CORAM : **A.P. Lavande,J**
DATE : 16th August, 2006

Heard Shri Ambilwade, learned counsel appearing on behalf of appellants.

The appellants challenge the Judgment and decree dated 24th December, 2004 passed by the First Ad hoc Additional District Judge, Gondia in Regular Civil appeal No. 67/97 partly allowing the appeal against the Judgment and decree dated 22nd July, 1997 passed by the Civil Judge, Sr. Dn., Gondia in Special Civil Suit No. 13/96.

2. The appellants are the legal representatives of Shivraj Lilhare, the original defendant in the above suit against whom the respondents filed the suit for specific performance in respect of the agreement of sale of the suit plot for consideration of Rs. 40,000/-. According to the plaintiff, an agreement of sale was entered into on 27.9.1991 in respect of the suit plot and an amount of Rs. 32,000/- was paid by way of earnest money. The trial court after holding that there was an agreement of sale

in respect of the suit plot and further that amount of Rs. 32,000/- was paid to the defendant at the time of execution of agreement, dismissed the suit for specific performance as well as for refund of the amount. The appellate Court in appeal filed by the plaintiff held that the plaintiff was not entitled to specific performance of the contract. However, the appellate Court held that the plaintiff was entitled to refund of Rs. 32,000/- with interest thereon @ 6% p. a. from the date of the suit till its actual realisation.

3. Mr. Ambilwade, appearing for the appellants submits that the appellate Court erred in holding that the plaintiff had paid Rs. 32000/- to the original defendant at the time of the execution of the agreement dated 27.9.1991. He further submitted that there was no agreement of sale entered into between the parties and, therefore, the appellate Court erred in holding that the amount of Rs. 32,000/- was paid as earnest money.

4. I have considered the submissions made by Mr. Ambilwade and perused the Judgments passed by both the courts below. The trial Court while answering issue no.4 held that there was an agreement of sale in respect of the suit property and that the amount of Rs. 32,000/- was paid by the plaintiff to the defendant. However, while refusing the decree for specific performance of the

contract, the trial Court did not grant refund of the earnest money to the plaintiff. The appellate Court held that the finding of the trial court that the plaintiff was not entitled to the specific performance cannot be faulted but the plaintiff was entitled to refund of Rs. 32,000/- with interest thereon @ 6% p. a. from the date of the suit till its realisation. This finding given by the lower appellate court is based upon correct appreciation of the evidence and cannot be faulted. Once it is held that there was an agreement of sale and amount of Rs. 32,000/- was paid as earnest money, the decree of the appellate Court granting refund with interest cannot be faulted. Therefore, I do not find any merit in the submission made by the learned counsel on behalf of the appellant. In any event, no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

Judge

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